



Municipal Client Advisory October 2009

NEW CHANGES TO CONFLICT OF INTEREST LAW

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In Chapter 28 of the Acts of 2009, entitled “An Act to Improve the Laws Relating to Campaign Finance, Ethics and Lobbying”, the Legislature increased the stringency of Massachusetts General Laws Chapter 268A, the Conflict of Interest Law. **These changes took effect September 29, 2009.**

A summary of the changes to the Conflict of Interest Law applicable to municipalities is as follows:

- Within thirty (30) days of an individual becoming a municipal employee, and on an annual basis thereafter, the city or town clerk must provide every municipal employee with a summary of the Conflict of Interest Law prepared by the State Ethics Commission. Each municipal employee must file a written acknowledgment with the city or town clerk. These summaries must be provided to all current municipal employees **on or before December 28, 2009.**
- Every municipal employee must complete an online training program as prepared and periodically updated by the State Ethics Commission within thirty (30) days of becoming a municipal employee and every two (2) years thereafter. For six (6) years, the municipal employer must keep records that its municipal employees have completed online ethics training. Current municipal employees must complete the online training program on the State Ethics Commission’s website (www.mass.gov/ethics) on or before **April 2, 2010.**
- Each municipality must designate a senior level employee to serve as a liaison to the State Ethics Commission. The municipality must notify the State Ethics Commission within thirty (30) days of changing its designated liaison. The liaison shall receive information and attend educational seminars from the State Ethics Commission. The State Ethics Commission must be notified of the name, title, telephone number, and email address of the designated liaison **on or before January 27, 2010**, by sending an email to David Giannotti, the Chief of the Public Education and Communications Division, at dgiannotti@eth.state.ma.us.



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- The range of possible penalties for violations of various sections of the Conflict of Interest Law has been increased from a fine of \$3,000 or maximum imprisonment of two (2) years, to a fine of \$10,000 or imprisonment in the state prison for up to five (5) years or in a jail or house of correction for up to 2 ½ years.
- If the State Ethics Commission determines after an adjudicatory proceeding that there is a violation of Sections 17 to 20 or 23 (Supplemental provisions; standards of conduct) that has substantially influenced action taken by a municipal agency in a particular matter, it may, in addition to any other remedies provided by law, avoid, rescind or cancel the action taken, as requested by the municipal agency and on such terms as required by the interests of the municipality and innocent third persons.
- If the State Ethics Commission determines after an adjudicatory proceeding that a person acted to his or her economic advantage in violations of Sections 17 to 20 or 23, it may: (a) avoid, rescind or cancel the action of the municipal agency, as requested by the municipal agency and on such terms as required by the interests of the municipality and innocent third persons; (b) issue an order requiring the person to pay damages to the State Ethics Commission on behalf of the municipality in the amount of the economic advantage or \$500, whichever is larger; and (c) require the person to make restitution to an injured third party. If there is no criminal conviction or acquittal for the same violation and the district attorney makes a written approval, the State Ethics Commission may order additional damages equivalent to the greater of \$500 or twice the amount of the economic advantage. The State Ethics Commission may seek up to \$25,000 in damages via an enforcement order, and any damages in excess of such amount may be pursued via civil action.
- The Supplemental Standards of Conduct (Section 23) is broadened to also prohibit: (a) a municipal employee from soliciting or receiving anything of substantial value which is not otherwise authorized by statute regulation, for or owing to the municipal employee's official position; and (b) a municipal employee from presenting a false or fraudulent claim to his or her employer for any payment or benefit of substantial value.



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- The State Ethics Commission must adopt regulations that: (a) define the term “substantial value”, but this amount must be at least \$50; (b) create exclusions for ceremonial privileges and exemptions; (c) create exclusions for privileges and exemptions provided solely because of family or friendship; and (4) provide additional exclusions where there is no risk of a conflict or the appearance of a conflict of interest.

Because the definition of “municipal employee” includes elected, appointed, contracted, paid and unpaid individuals, municipalities should ensure that its “municipal employees” are complying with the new on-line training and certification requirements.

The State Ethics Commission has indicated that it will “phase-in” enforcement of these provisions so that full and vigorous enforcement will be in place by the years’ end. This is not a license to ignore the law until then.

If you have any further questions about the conflict of interest law, please contact Robert S. Mangiaratti or the attorney assigned to your account at (617) 479-5000. If you have general questions about Murphy, Hesse, Toomey & Lehane, LLP, please contact information@mhtl.com.

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Murphy, Hesse, Toomey & Lehane, LLP, is a full-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. As counsel to cities, towns and other Governmental entities throughout the Commonwealth of Massachusetts, the firm assists and advises public officials and committees with respect to matters of day-to-day management, as well as initiating or defending litigation on their behalf.

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